IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.589 OF 1994

Hindurao Bandu Nalawade
Age about 38 yrs.
R/o Jakhinwadi, Taluka Karad,
Dist. Satara .. Appellant

Vs.

The State of Maharashtra .. Respondent

Mr. R.S. Kate for Appellant.
Mr. V.B. Konde-Deshmukh, APP for Respondent-State.

CORAM : S.S. PARKAR & S.R. SATHE, JJ.

Date : December 06, 2004.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed challenging the Judgment and Order dated 29/10/1994 delivered by the IIIrd Addl. Sessions Judge, Satara convicting the appellant-accused for the offence under Section 302 of IPC and sentencing him to life imprisonment and to pay a fine of Rs.2000/- in default SI for 3 months in Sessions Case No.33 of 1992.

2. Briefly stated the prosecution case is as follows:-

. The incident of assault took place on 25/11/1991 at about 7 in the morning. As per the

complainant PW 6 Dattu Nalawade, deceased Tanaji was proceeding to his field. At that time accused came from behind him carrying an axe and assaulted the deceased from his back side on the rear side of his neck as a result of which he fell down. At the time of assault Ishwara Patil (PW 10), his son Hanumant (PW 9) and Jagannath (PW 11) were present. Jagannath tried to intervene but the accused pushed him back. Accused assaulted the deceased on his neck, back, waist and legs. The complainant immediately went to the Police Patil of the village and informed him about the incident. Thereafter Police Patil and the complainant went to Karad Police Station where the complaint Exh.19 was lodged. After recording the complaint the crime was registered and the police went to the place of incident. Inquest panchanama Exh.8 was prepared. Police also prepared spot panchanama Exh.11 and arrested the accused when he went to the police station himself. Accused was arrested under panchanama and the clothes from his person were seized under panchanama Exh.14. The blood stained axe kept in the house of Babu Jadhav at Jakhinwadi was also seized by the police on the same day under panchanama Exh.16. Statements of the witnesses were recorded and the dead body was sent for post mortem examination. The clothes of the accused and the deceased and the

axe (article 7) were sent to the office of the C.A. After completion of the investigation, charge-sheet came to be filed and the case was committed to the Sessions Court.

3. Before the Sessions Court, charge was framed for offence under Section 302 of IPC, to which accused pleaded not guilty. On behalf of the prosecution 12 witnesses have been examined, who were as follows:-

. PW 1 is Suresh Nalawade, panch for spot panchanama Ex.11. PW 2 is Ramakant Khadag, panch for seizure of the clothes of the accused but he turned hositle and, therefore, PW 3 Ramchandra Sankapal was examined as panch for seizure of clothes under panchanama Exh.14. PW 4 is Uttam Patil, panch for the seizure of axe who turned hostile. PW 5 is Ramchandra Nalawade, who was another panch for recovery of axe but he also turned hostile. PW 6 is Dattu Nalawade, the complainant who was an eye witness to the assault. PW 7 is Prakash Nalawade, the brother of the deceased, who has deposed about the previous enmity and the dispute between the deceased and the accused which constitutes motive for the offence. PW 8 is Dr.Manorama Patnaik, who conducted autopsy on the dead body. PW 9 Hanumant Nalawade, PW 10 Ishwara Patil and

PW 11 Jagannath Nalawade were eye witnesses to the assault but they also turned hostile. Lastly, PW 12 is PSI Vishnu Jagtap, who investigated the case. The defence of the accused was of denial and false implication as complainant PW 6 had enmity with him.

4. After considering the entire evidence on record the trial court convicted the accused for the offence of murder under Section 302 of IPC and sentenced him as aforesaid. The said order of conviction and sentence is under challenge in this appeal.

5. Mr. Kate appearing for the appellant contended that the evidence of the complainant should not be believed as according to him the complaint was narrated to the police by the Police Patil. He further contended that the recovery of axe and the seizure of blood stained clothes of the accused should not be believed as the panch witnesses turned hostile.

6. No doubt many of the witnesses have turned hostile in this case, yet, in our view, the trial court has properly appreciated the evidence of the complainant, an eye witness, and the corroborating circumstance of finding of clothes of the accused

stained with blood of the group of the deceased. In this case there were four eye witnesses to the incident, however, three of them i.e. PWs 9, 10 and 11 had unfortunately turned hostile and did not support the prosecution case as they were from the same village. So far as PW 6 complainant Dattu Nalawade is concerned he had witnessed the assault which took place in village Jakhinwadi. At that time he was hardly at a distance of 25-30 paces from the place of assault. He saw accused coming from behind the deceased Tanaji with an axe and assaulting him on the back side of his neck as a result of which Tanaji fell down. According to him Jagannath tried to intervene but accused pushed him back and again assaulted the deceased with an axe on different parts of his body. He immediately went to the Police Patil and informed him about the incident. The Police Patil took the complainant to Karad Police Station where the FIR Exh.19 was lodged and crime was registered at about 8 a.m. No contradiction is shown between the deposition of the complainant and the FIR. The complaint fully corroborates the deposition of the complainant. The complaint was filed within an hour's time of the incident. The complainant mentioned the name of the accused in the complaint on the basis of which crime was registered and accused came to be

arrested on the same day and recovery of the blood stained axe was made from the house of one Babu Jadhav. No doubt the said axe (article 7) was also found stained with blood group "B" which was also on the clothes of the deceased, but in our view the trial court rightly did not consider that evidence of recovery of axe as the memorandum of statement of the accused was not drawn under panchanama.

7. The defence advocate contended that the evidence of the complainant PW 6 cannot be relied on because according to him the complaint was narrated by the Police Patil at the police station. Even if it is true, we see no reason to discard the evidence of the complainant when he has stuck to the contents of the complaint lodged on the basis of his narration to the Police Patil. It is not the case of the prosecution that the Police Patil was an eye witness. The complainant had first gone and informed about the incident to the Police Patil who, in turn, took him to the police station where the complaint was lodged. When the entire incident was narrated to the Police Patil by the complainant, the Police Patil, in turn, seems to have narrated the same to the police in the presence of the complainant who has signed the complaint. He has also deposed that the contents of

the complaint are correct. In the cross-examination he has also stated that he knew reading.

8. The evidence of eye witness is squarely corroborated by PW 8 Dr. Patnaik, who conducted post mortem on the dead body. According to Dr. Manorama Patnaik following five external injuries were found on the dead body:-

1. Two big incised wounds on the right side of neck, extending towards back, transferred parallel to each other, 8" x 6". Gesophagus out, 6th, 7th cervical vertical aspect. All large nessusaidre of neck are cut, trachea is cut.

2. Two incised wounds on right parietal region, vertical 3" x 1/2" x bone deep, blood clot present.

3. Incised wound transverse on right shoulder, 3" x 1/2" x 1/2".

4. Incised wound vertical on left scapular region 3" x 1/2" x 1/2" blood clot present.

5. Incised wound on lower part of front of neck of 2" x 1" x 1" blood clot present.

. In addition, she also noticed following two injuries:-

1. Right parietal bone cut 3".

2. 6th, 7th vertical right vertical are

cut.

. On internal examination she found following two injuries on the dead body:-

1. Extensive haematoma right parietal and frontal region.

2. Fracture of right parietal bone. Trachea is cut transversely, at the upper and in two places. Large vessels of neck of both sides are cut.

9. The doctor also found 6th, 7th cervical vertebrae were cut internally. Spinal cord and all the surrounding arteries were cut. According to the doctor external injury no.1 corresponded to injury nos.C and H of column No.20 as well as with injury in column no.22. According to the doctor the injuries were possible by sharp edged axe, like the axe article no.7. The cause of death has been given as cordio-respiratary failure, due to injury on neck and cutting of 6th and 7th cervical vertebrae and spinal cord trachea large vessels of neck. It is pertinent to note that all the external injuries were incised wounds which were possible by use of an axe. They were found on the neck, parietal region, right shoulder, left scapular region and lower part of the front neck. Thus, the evidence of eye witness is fully corroborated by the medical evidence.

10. Besides the above evidence, it is important to note that accused was arrested on the same day of the incident and naturally after his arrest the clothes from his person were seized. According to the Investigating Officer the accused himself had gone to the police station and in that case he would not go for changing the clothes. His clothes were stained with blood and the police were bound to seize them under the panchanama as was done under panchanama Exh.14. Though one panch had turned hostile, PW 3 Ramchandra Sankpal had supported the seizure of blood stained clothes from the person of the accused under panchanama Exh.14. He has deposed that those clothes were on the person of the accused and were having blood stains. The clothes were wrapped and sealed with label affixed on it. The police prepared the panchanama and he signed the same. Merely because in the cross-examination he stated that police did not show him the person but showed only the clothes, his evidence cannot be discarded altogether as in the next breath he has denied that the name of the accused was not disclosed to him and has further stated that it was an open shirt worn by the accused and has also given the description of the blood stained stick which was seized that time. In any event, the court can

certainly rely on the evidence of Investigating Officer who has deposed about the seizure of the clothes from the person of the accused and there is no reason to discard his evidence. He has stated that he seized the clothes of the accused under panchanama Exh.14. The trial court has not taken into consideration the C.A. report as regards the phial of blood of the accused and the deceased sent to the C.A.'s office in the absence of evidence as to when and who had taken the blood samples of the deceased and the accused. The C.A. report dated 31/12/91 Exh.35 does show that blood of group "B" was found on article nos.4,5 and 6 which were the clothes of the deceased and similarly blood stains of group "B" were found on article nos.8, 9, 10 and 11 which were the clothes of the accused. Accused has not given any explanation of finding of the blood on his clothes but has simply denied it as false. The C.A. report Exh.33 which shows that the blood of the accused was of "O" group has not been relied on by the trial court for want of sufficient evidence as to when and who had taken the blood sample of the accused. Even then, in the absence of explanation by the accused as to how his clothes came to be stained with blood of group "B", the court can rely on the report of the C.A. finding blood of group "B" on his clothes which was

also found on the clothes of the deceased as the circumstance against the accused.

11. Besides the aforesaid evidence prosecution has also led evidence of motive by examining PW 7 Prakash Nalawade, who is the brother of the deceased. He has deposed that the land of the accused is near the lands of the witness and the deceased. He has also deposed that they had a dispute on account of neem tree which was in between the lands of the deceased and the accused. About 7-8 months before the incident the accused had cut the branches of neem tree and, therefore, deceased and the witness had obstructed it and, therefore, there was altercation between the two sides but accused took away the branches. He has also deposed that once he had gone to help the wife of the accused to lift pot of cow dung on her request. She embraced him in the cattle shed which was seen by the accused and, therefore, he assaulted him and the accused started alleging that he had outraged his wife’s modesty. It is important to point out that in the cross-examination of this witness, on behalf of the defence, it is suggested to the witness that he had raped the wife of the accused by going to the cattle shed. In his 313 statement the accused has not denied about the previous dispute about the land and

the neem tree. But in answer to Question No.2 he has stated that the dispute was settled and over. The defence, therefore, contended that there was no motive as the dispute about the neem tree was settled. But that is only the version of the accused in his 313 statement. But the fact remains that there was dispute and altercation between the two sides on account of the accused cutting the neem tree which was stanidng in between the lands of these two parties. Thus, the prosecution has also led evidence of the motive. There was some dispute in the past and that would constitute motive for the accused to take law in his hands.

12. The prosecution has thus proved the case against the accused beyond reasonable doubt by leading the evidence of an eye witness who lodged his immediate complaint. Complainant is corroborated squarely by the medical evidence and the circumstance of finding of the blood of group "B" on the clothes of the accused which was also found on the clothes of the deceased. Besides there is evidence of motive given by the brother of the deceased. In the circumstances, we see no reason to interfere in the order of conviction and sentence recorded by the trial court against the appellant-accused.

12. In the result, the order of conviction and sentence recorded by the IIIrd Addl. Sessions Judge, Satara on 29/10/1994 in Sessions Case No.33 of 1992 against the appellant-accused is confirmed and the appeal is dismissed. The appellant-accused shall surrender to his bail forthwith.

(S.S. Parkar, J.)

(S.R. Sathe,J.)